UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of DLC CORP. d/b/a TEA PARTY CONCERTS and/ or LIVE NATION Employer and INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE U.S. AND CANADA, LOCAL 11, AFL-CIO, CLC Petitioner	Case 1-RC-22005

[1]

DECISION AND DIRECTION OF ELECTION

The Employer is engaged in promoting musical concerts at 38 different venues in eastern Massachusetts. The Union seeks to represent a unit of about 200-250 stage hands and wardrobe attendants employed by the Employer at 10 venues in the greater Boston area. With the exception of the house sound technician employed at the Tweeter Center, the parties agree on the unit description. [2] The Union would include the house sound technician at the Tweeter Center, while the Employer would exclude that position from the unit. The parties also disagree regarding the eligibility formula to be used in the election. The Union proposes that employees be eligible to vote who worked an average of four hours per week in the calendar quarter preceding the issuance of the Decision and Direction of Election, as well as any additional employees who worked an average of four hours per week during the approximately 13-week period in the summer of 2005 when the Tweeter Center was operational. The Employer proposes that employees be eligible to vote who have worked either two shows or more over the last year or three shows or more over the last two years. Finally, the Union contends that the Board should run a manual election in this matter, while the Employer argues that a mail ballot election should be conducted.

I find that the appropriate eligibility formula should be all employees who were employed by the Employer on at least two shows in the year prior to the date of this Decision and Direction of Election who were not terminated for cause or quit voluntarily prior to the completion of the last job for which they

were employed. I further find that the position of house sound technician at the Tweeter Center should be included in the unit. Finally, I conclude that the mechanics of the election, including whether the election should be conducted manually or by mail ballot, is an administrative matter to be determined by the Regional Director following the issuance of the Decision and Direction of Election.

A. The Employer's Operation

The Employer is a wholly owned subsidiary of Live Nation (formerly known as Clear Channel Entertainment), and, as indicated above, is engaged in promoting musical concerts at 38 different venues in eastern Massachusetts. The Employer typically is responsible for providing a stage crew for the concerts it promotes. At certain venues, the venue either provides the stage crew itself or there is a collective-bargaining agreement in effect that governs the issue.[3] At two venues, the Employer has a collective-bargaining agreement in place with the Union.[4] At several other venues, the stage crew is provided by a sister company of the Employer under a collective-bargaining agreement with the Union. Finally, there are the 10 non-represented venues at issue in this case where the Employer is solely responsible for providing the stage crew for performances.[5] Of these, Campanelli Stadium, Gillette Stadium, and the Tweeter Center are each open-air venues that operate seasonally between late May and mid-September. The Orpheum Theater lacks air conditioning and is also, essentially, a seasonal venue, because it generally does not operate in July and August. The remaining 6 venues operate year round.

The Employer produces and provides labor for an average of 119 shows per year at these 10 venues. Over three-quarters of these shows are held at either the Orpheum Theater or the Tweeter Center. About 90-95 percent of these shows are single performances. On occasion, the Employer will have shows at different locations on the same night.

Douglas Borg is the senior vice president of venues for the Employer. Thomas Bates is the senior director of productions for the Employer and is responsible for managing the production of the shows produced by the Employer, reporting to Borg. Bill Kinney is the crew chief and is responsible for the hiring and staffing of the stage crews. Kinney reports to Bates. Some productions also require an assistant crew chief.[6]

Before a performance, the band informs the Employer of its needs for the stage crew, identifying the numbers and categories of employees it requires. Bill Kinney calls the crew and assigns them their duties.[7] Bates testified that Kinney calls "benefit" employees first, "then there's people who seem to have more availability than others," and "then after that we go down a list." Kinney may determine not to call employees who have had performance issues. The size of the crew varies from as few as 4-6 for performances at the Roxy Nightclub and Somerville Theater, to as many as 100-130 crew members for performances at Gillette Stadium.

Employees perform the same duties at whichever venue they work. These duties include the loading and unloading of equipment before and after the show, known as "load in" and "load out," and may also include some duties during the performance itself, such as spotlight operator and camera operator. Crew members work a minimum of four hours per shift and may work as many as 18 hours. The call times for members of the crew will vary. Different crews may be used to staff shows on consecutive nights in different venues to keep the employees fresh.

The Employer employed about 250 employees who worked on at least one show in 2004 and in 2005. There were about 200 employees who worked two jobs in one year or three jobs in two years. Beyond that information, there is no evidence in the record regarding the number of hours, or the number of shows, worked annually by employees.

The Employer presented testimony that some of its employees have other jobs, are college students or have out-of-state addresses. The precise number of employees in these categories is not reflected in the record. There was anecdotal testimony describing two to three employees in each category. Further, the Employer presented testimony that some employees, on occasion, go on tour with a band, taking them out of the job market until their return. In support of this claim, the Employer introduced a chart which identified six employees who worked for the Employer in 2003 and 2005, but not in 2004. The reasons for their absence and return were not explained. There is no evidence in the record identifying the number of employees who left the Employer but did not return. The Employer also identified three employees who went on tour with bands for unspecified periods of time during which they were not available to work for the Employer.

B. The Appropriate Eligibility Formula

1. Positions of the Parties

The Employer argues that the determination of an eligibility formula in this matter should be governed by the Board's decision in *Clear Channel d/b/a Oak Mountain Amphitheater*, Case No. 10-RC-15344 (unpublished Decision, December 3, 2003). In *Oak Mountain*, the Board, following its decision in *American Zoetrope Productions, Inc.*, 207 NLRB 621 (1973), found appropriate an eligibility formula for a unit of stagehands enfranchising those employees who had worked at least two shows in the year prior to the decision. Further, contending that there are special circumstances existing in the Boston market for employees, the Employer argues for an additional eligibility standard enfranchising employees who have worked three shows in the previous two years. These special circumstances include the unpredictability of the work of the Employer and the transient nature of its work force due to the fact that employees have other commitments, such as other jobs or being college students. The Employer also argues that some employees go on tour with bands for periods of time, taking them out of the job market during that period.

The Union argues that eligible voters should be those who averaged four or more hours of work in the calendar quarter immediately preceding the issuance of the Decision and Direction of Election under the Board's decision in *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970). In order to accommodate those employees who work the seasonal venues such as the Tweeter Center, the Union proposes that those

[8]

employees who worked an average of four hours per week during the Tweeter Center season also be eligible to vote. In support of its position that I apply the *Davison-Paxon* formula for eligibility, the Union relies upon *Steppenwolf Theatre Co.*, 342 NLRB No. 7 (2004).

2. Analysis

In devising eligibility formulas to fit the unique conditions of a specific industry, the Board seeks "to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer." *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 296 (1992). In the different areas of the entertainment industry, the Board has been flexible in devising eligibility formulas, in recognition of the fact that employees are frequently hired on a day-by-day or production-by-production basis. *DIC Entertainment, L.P.*, 328 NLRB 660 (1999). In doing so, the Board stated that it is its responsibility to devise an eligibility formula that is "compatible with our obligation to tailor our general eligibility formulas to the particular facts of the case." *American Zoetrope*, supra. Thus, in *Medion, Inc.*, 200 NLRB 1013 (1972), employees who were employed on at least two productions for a minimum of 5 working days in the year preceding the decision were deemed eligible to vote. In *American Zoetrope,* the Board eliminated the 5 day requirement on a showing that, unlike in *Medion*, most unit jobs lasted only 1 or 2 days.

In *Clear Channel d/b/a Oak Mountain Amphitheater*, cited by the Employer, the Board granted review of a regional director's decision in which he applied a variant of the *Medion* formula to a unit of stage hands and related employees similar to the unit at issue here. The Board invited briefs addressing whether the Board should reconsider the entertainment eligibility formulas set forth in *Medion*, *American Zoetrope*, and related cases. The Board determined it was "unnecessary to reevaluate the eligibility formulas in this industry" and decided the case based on existing precedent. *Oak Mountain*, supra, slip op. at 4. The Board found that the employer's shows lasted only one to three days, with the majority lasting only 1 day. The Board determined that an employee successfully completing two projects for the employer was a more significant indication of future employment than the total number of hours worked. Thus, the Board eliminated the hours of work requirement found by the regional director and held that the *American Zoetrope* standard of two shows in the year prior to the issuance of the Decision and Direction of Election applied.

I find that the facts in this case are similar to those in *Medion, American Zoetrope,* and *Oak Mountain*. Each of these cases involved employers who generally employed employees on projects for brief periods of time, frequently as short as one day. An employee's likelihood of reemployment is demonstrated by the fact that he was recalled by the employer, indicating a satisfaction with his past performance. In each of these cases, as well as in the present case, the only evidence in the record regarding the employer's satisfaction with an employee's work is whether it has reemployed him within a reasonable period of time. In *Medion*, *American Zoetrope*, and *Oak Mountain*, the Board found that evidence of repeated employment of the employee on multiple projects was a positive indicator that the employee had a reasonable expectancy of future employment with the employer. Therefore, the eligibility standard adopted in *American Zoetrope* and *Oak Mountain* best reflect the policy of enfranchising "employees who by happenstance are not currently employed, but who have a reasonable expectancy of

reemployment." *Hondo Drilling Company N.S.L.*, 164 NLRB 416, 417 (1967); *American Zoetrope*, supra at 623.

Inasmuch as most unit jobs last only one day, the standard of two shows in a year strikes a proper balance for eligibility in this case. While the Union urges that the eligibility formula should be based upon hours worked, I conclude that such a formula would not be appropriate. It is the Employer's recall of an employee to work, not the number of hours of work actually performed, that is most indicative of the employee's reasonable expectancy of recall. See *American Zoetrope*, supra at 623. Moreover, the record lacks any evidence of the hours worked by the Employer's employees upon which such a finding could be based.

The Employer further seeks to expand the *American Zoetrope* formula by adding an additional eligibility criterion of three shows worked in a two-year period based on the asserted "special circumstances" of this Employer. I find this position to be unsupported by record evidence. The special circumstances argued by the Employer concern its contention that the sporadic nature of the Employer's work has led to a transient workforce with numerous other obligations and inconsistent availability for work. These commitments, it is argued, render their employment more sporadic in the Boston market than in other areas and are related to the facts that some employees are college students, others have other jobs, and still others may go on tour with bands for periods of time during which they are unavailable for employment with the Employer.

The record is virtually devoid of facts to support this contention, however, rendering it entirely speculative. There is no evidence of the number of employees who are college students or who have other [9]
jobs. The Employer identified six employees who worked in 2003 and 2005, but not in 2004. No evidence was offered, however, as to the reasons for their break in employment, beyond the speculation of Douglas Borg that "they may have been on tour." Three employees were identified as having gone on tour [10]
with bands and returned, though the record does not identify the dates or lengths of their service. I conclude that this number, out of a potential unit of 200-250 employees, is far too small to warrant an expansion of the eligibility formula, especially in the absence of evidence of the reasons for the employment break or evidence that there was a commitment to return to work for the Employer. While it is possible that employees may voluntarily leave the Employer for a period of time and return, it is equally likely that the employee may not return. The sporadic nature of the Employer's work, argued by the Employer in support of its position, is similar to that in both *American Zoetrope* and *Oak Mountain*. There is no evidence that the work force in this case is any different from, or less available than in those cases. I note further that the Employer has cited no authority in which an eligibility formula similar to what it has proposed was adopted by the Board. While the Board does have broad authority in this area in the interests of enfranchising employees who maintain a continuing interest in the Employer, I find that [11]
connection in this case to be speculative and, therefore, I reject the Employer's proposal.

As to the formula proposed by the Union, I find its reliance on *Steppenwolf Theatre Company*, supra at 342 NLRB, to be misplaced as *Steppenwolf* is factually distinguishable from the present case. In *Steppenwolf*, the Board noted that the most widely used formula for voting eligibility is the *Davison-*

Paxon formula, under which an employee is deemed eligible to vote if he averaged 4 or more hours of work per week in the calendar quarter prior to the eligibility date. *Davison-Paxon*, supra at 185 NLRB 21, 23-24. The Board further noted that the *Davison-Paxon* formula is normally applied to determine eligibility of part-time or on-call employees absent a showing of special circumstances. The Board stated, "Irregular patterns of employment in the entertainment industry have sometimes presented special circumstances, leading the Board to create various eligibility formulas suited to those unique conditions," citing, among other cases, *Medion* and *American Zoetrope*. *Steppenwolf*, supra, slip op. at 3. The Board concluded that *Steppenwolf* did not present special circumstances warranting a deviation from the *Davison-Paxon* formula. I conclude that the present case does present such special circumstances.

Steppenwolf involved a theater company operating 12 months a year with performances taking place 48-50 weeks a year in three theaters. The employer had a permanent full-time staff of 19, supplemented by part-time employees. Part-timers performed about 30 percent of the work necessary for the production. The hours worked by part-time employees varied widely, with some working one to two days and then not being needed for a period of time, while others worked more hours per week or were used on a more frequent basis. The evidence showed that many part-time employees repeatedly worked for the employer and some filled in for full-time employees. No party in *Steppenwolf* argued that the *Medion* or *American Zoetrope* formulas should apply; the Board found them to be factually distinguishable. *Steppenwolf*, supra, sl. op. at 3, fn. 7.

These facts contrast markedly with the facts here. The Employer has a small permanent work force and the vast majority of its work is performed by part-timers. The regularity of work is far less frequent in this case and the duration of the jobs far shorter, generally lasting one day. In short, this case, unlike *Steppenwolf*, demonstrates the irregularity of employment appropriate for the application of the *American Zoetrope* formula rather than the *Davison Paxon* formula. Accordingly, I reject the Union's proposed application of the *Davison-Paxon* formula. In light of this determination, I need not make a decision on the Union's additional proposal regarding the eligibility of employees who average four or [12]
more hours per week during the Tweeter Center season.

Accordingly, I find that eligible to vote in the election will be all employees who were employed by the Employer on at least two shows in the year prior to the date of this Decision and Direction of Election who were not terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

C. The House Sound Technician at the Tweeter Center

1. Facts:

The Employer employs a house sound technician for performances at the Tweeter Center, an [13]
outdoor venue that has a lawn seating area. The house sound technician is responsible for the sound emanating to the lawn at the venue and for taking decibel readings for the surrounding neighborhoods. Additionally, he is responsible for running an audio line to the press tent and trouble-shooting the speakers

at the turnstiles and gates to the venue. Unlike stage hands, who report to Bill Kinney, the crew chief, the house sound technician reports to and is scheduled by Thomas Bates, the senior director of productions, to whom Kinney reports. The house sound technician's duties also include reporting to Bates regarding the condition of the equipment. Unlike other stage hands, the house sound technician is not required by the band for its performance, but is hired on the Employer's own initiative for reasons that are not clear in the record. The record is silent as to what contacts the house sound technician has with other employees. Bates testified that, on rare occasions, the house sound technician could fill in for an audio technician, a stipulated unit position. The frequency of this occurrence and the duties involved are not reflected in the record.

Mike Hyman performs as the house sound technician at the Tweeter Center. Hyman is one of the Employer's nine benefit employees and works as a stage hand 12 months of the year. Hyman also works as a stage hand during performances at the Tweeter Center, both before and after his work as house sound technician. As a stage hand, he is scheduled and supervised by Bill Kinney. Hyman receives the same pay and benefits as other benefit employees, regardless of whether he is functioning as a stage hand or house sound technician.

The Employer contends that the position of house sound technician at the Tweeter Center should be excluded from the unit based on its lack of a community of interest with other stage hands and its separate supervision. The Employer argues that, while the stage crew is responsible for supporting the artist before, during, and after the performance, the house sound technician has little responsibility to the artist during the performance. The Employer contends on brief that there is "very little interaction" between the house sound technician and the stage crew. The Employer concedes that Hyman performs stage crew duties when not performing as house sound technician and that, on that basis, he is an eligible voter, but maintains that the position of house sound technician should be excluded from the unit.

The Union contends that the house sound technician position should be included in the unit as Hyman, the incumbent, also functions as a stage hand and has similar wages and benefits as other employees. The Union contends that the fact that the house sound technician is separately supervised is not a sufficient basis for excluding the position from the unit.

2. Analysis

The Employer makes two main arguments for the exclusion of this position – that it is separately supervised, and that, unlike the remainder of the stage crew, it is not requested or required by the performing artist. While the house sound technician may not be required for the artist to perform, clearly the Employer has determined that this position is essential to the performance itself. While the testimony was not detailed, the technician's duties are to monitor the audio levels at the concert, which would appear to be of primary import to the performance. Supporting this conclusion is the testimony that the house sound technician fills in on occasion for the audio technician, indicating that the two positions involve similar skills. Accordingly, the duties of the position seem similar to those performed by other unit employees. While the Employer contends that there is "very little interaction" between the house sound technician and the stage crew, the record contains no evidence regarding what interaction exists, if any, between these employees.

I conclude that the position of house sound technician should be included in the unit. The position has similar duties to another unit position. The holder of the position also holds a unit position and receives the same pay and benefits as other employees. While he is separately supervised while functioning as house sound technician, that fact, standing alone, does not warrant exclusion of the position. See *Blue Grass Industries*, 287 NLRB 274, 298 (1987) (mill clerical). Moreover, were the position not to be included, it appears that this could be the sole unrepresented position at the venue. *Mrs. Karl's Bakery*, 214 NLRB 230, 231 (1974). Accordingly, for these reasons, I find that the house sound technician at the Tweeter Center should be included in the unit.

D. The Mail Ballot

The parties disagree on whether the election in this matter should be conducted manually or by mail. The mechanics of the election, including the date, time, place of the election, and whether the election should be conducted by mail or manually is a nonlitigable issue at the hearing. There is no statutory requirement or other rule stating that a regional director's decision on whether or not to conduct an election by mail ballot must be contained in the Decision and Direction of Election. *Odebrecht Contractors of Florida, Inc.*, 326 NLRB 33 (1998). While the parties may have input into the decision, I will determine the mechanics of the election following the issuance of the Decision and Direction of Election.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time stage hands and wardrobe attendants, including carpenters, riggers, lighting technicians, audio technicians, camera operators, truck loaders, electricians, grips, gaffers, slide projector operators, and properties employees employed by the Employer, engaged in the loading in, operation, and loading out of equipment used in connection with live entertainment events presented at the Tweeter Center, Mansfield, Mass., Orpheum Theater, Boston, Mass., Somerville Theater, Somerville, Mass., Sanders Theater, Cambridge, Mass., Gillette Stadium, Foxboro, Mass., Campanelli Stadium, Brockton, Mass., Chevalier Theatre, Medford, Mass., Tsongas Arena, Lowell, Mass., Club Lido, Revere, Mass. and Roxy Nightclub, Boston, Mass., and the house sound technician at the Tweeter Center, but excluding senior vice president of venues, senior director of productions, crew chief, assistant crew chief, all other employees, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed on at least two shows during the calendar year immediately preceding the date of this Decision who were not terminated for cause or quit voluntarily prior to the completion of the last job for which they

were employed, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the U.S. and Canada, Local 11, AFL-CIO, CLC.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before May 16, 2006. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570.
This request must by received by the Board in Washington by May 23, 2006. You may also file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: http://www.nlrb.gov/.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board

Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 9th day of May, 2006.

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Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[2]

The unit agreed upon by the parties is:

> All full-time and regular part-time stage hands and wardrobe attendants, including carpenters, riggers, lighting technicians, audio technicians, camera operators, truck loaders, electricians, grips, gaffers, slide projector operators, and properties employees employed by the Employer engaged in the loading in, operation, and loading out of equipment used in connection with live entertainment events presented at the Tweeter Center, Mansfield, Mass., Orpheum Theater, Boston, Mass., Somerville Theater, Somerville, Mass., Sanders Theater, Cambridge, Mass., Gillette Stadium, Foxboro, Mass., Campanelli Stadium, Brockton, Mass., Chevalier Theatre, Medford, Mass. Tsongas Arena, Lowell, Mass., Club Lido, Revere, Mass., and Roxy Nightclub, Boston, Mass., but excluding all other employees, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

[3]

These are the Bank of America Pavilion and Fenway Park.

[4]

These are the Colonial Theater, the Opera House, and the Wilbur Theater.

[5]

These venues are set forth in the unit description above.

[6]

The parties have stipulated, and I find, that Douglas Borg, Thomas Bates, and Bill Kinney are statutory supervisors who should be excluded from any unit found appropriate. The parties further stipulated, and I find, that the position of assistant crew chief is supervisory and should be excluded from any unit found appropriate.

[7]

"Benefit" employees are those who receive benefits from the Employer, including health insurance, vacation pay, and 401(k) benefits. Employees became benefited by working more than 1500 hours in the year. There are presently nine benefit employees.
[8]

The Tweeter Center season is about 13 weeks in duration during the summer months.
[9]

While the Employer did offer exhibits listing employees who were college students or had other employment, the Hearing Officer properly rejected these exhibits as the Employer refused to provide the names of the individuals involved.

[10]

The Employer, on brief, asserted facts (Employer brief, p. 10, fn. 15 and 16) regarding several employees and their purported breaks in service. These assertions, however, appear to be unsupported by record evidence.

[11]

Moreover, use of the *American Zoetrope* formula here would enfranchise a substantial number of employees as the record indicates that out of 250 employees in 2005, about 200 worked two shows or more and would be eligible to vote under the *American Zoetrope* formula. Similarly, employees on tour for six months have a significant opportunity to work two shows in the remaining six months, thereby becoming eligible to vote.

[12]

I note further that there is no evidence on the record regarding the hours worked by the Employer's employees. In the absence of such evidence, it is incumbent upon me to choose an eligibility formula that best suits the circumstances of the case. *Steppenwolf*, supra, sl. op. at 3, fn. 7.

[13]

This is the only venue at which the Employer employs a house sound technician.